

RECEIVED
IN ALEXANDRIA, LA

DEC 09 2009

TONY R. MOORE, CLERK
WESTERN DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

JOSEPH NED HENRY, JR., et al

CIVIL ACTION 09-01479

VERSUS

U.S. DISTRICT JUDGE DEE DRELL

UNION PACIFIC RAILROAD COMPANY

U.S. MAGISTRATE JUDGE JAMES D.
KIRK

J U D G M E N T

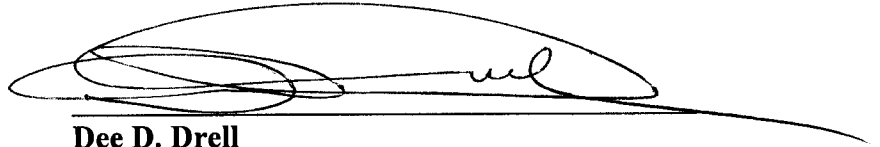
For the reasons stated in the Report and Recommendation of the Magistrate Judge previously filed herein, and after an independent (de novo) review of the record including the objections filed by petitioner, and having determined that the findings and recommendation are correct under the applicable law;

IT IS ORDERED that the Motion to Remand, **Doc. #10**, is GRANTED. This case is ordered REMANDED to the 10th Judicial District Court in Natchitoches, Parish, Louisiana.

In so ruling, we also note the following in response to Defendant's objections to the Report and Recommendation. Defendant cites and relies upon Franks Investment Co., L.L.C. v. Union Pacific Railroad Co., Civil Action No. 08-0097, as persuasive authority that the instant case should be maintained here. The Franks record is inapposite. There was *no* remand issue in that case, and it appears neither party made an issue of it. *This* plaintiff has. Once again, Defendant argues, without *any* evidentiary offering, that its expense in building a crossing and

related factors bring it within this Court's jurisdictional ambit. Defendant continues to want us to speculate jurisdiction. That we cannot do.

THUS DONE AND SIGNED, in chambers, in Alexandria, Louisiana, on this 9th day of December, 2009.

A handwritten signature in black ink, appearing to read 'Dee D. Drell', is written over a horizontal line.

Dee D. Drell
UNITED STATES DISTRICT JUDGE